SINGLE BENCH (3)

C.S.100/- (1)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO.2564 /2006 [S.B.]

PETITIONER :- **CHANDRA KUMAR BIRKO**
S/o late Darashram Birko, aged about 23 years, R/o Gram Madanpur, Korba, Tehsil and District- Korba [C.G.]

VERSUS

RESPONDENTS :- 1] **STATE OF CHHATTISGARH**
Through- Secretary,
Tribal Welfare Department,
Mantralaya, D.K.S. Bhavan,
Raipur [C.G.].

2] **DIRECTOR,**
Tribal Welfare Department
Raipur [C.G.]

3] **ASSISTANT COMMISSIONER**
Tribal Welfare Department,
Korba [C.G.]

4] **BLOCK EDUCATION OFFICER,**
Tribal Welfare Department,
Korba [C.G.]

P.R. No. 26/6/06
Presented by Shri Sunder Shyam
dated 11/5/06

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WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

Single Bench : Hon'ble Shri Satish K. Agnihotri, J.

W. P. No. 2564 of 2006

Petitioner	Chandra Kumar Birko
	Versus
Respondents	State of Chhattisgarh and others.

Shri Gurudeo Sharan, counsel for the petitioner.

Shri Satish Gupta, Deputy G.A. for the State/ respondents.

ORDER

(Passed on 10th Day of January, 2007)

The petitioner being one of the legal heirs of late Darashram Birko who died while working as Upper Division Teacher (Superintendent) on 06-07-1994 in harness. The deceased, at that time, was posted as Superintendent, Adiwasi Balak Ashram, Village Madanpur, Block and District Korba. The mother of the petitioner by letter dated 10-09-1994 (Annexure-P/2) made an application to the Block Development Officer, Block – Korba stating that her all three children were minor at that point of time and appropriate application would be made after the minor children attained the majority.

(2) Learned counsel for the petitioner submits that the petitioner has thereafter made an application for appointment on compassionate basis. On perusal of the writ petition and the documents appended thereto, it is nowhere found that any application was made. The petitioner has not further stated as to what was the date of birth of the petitioner and when he has attained majority. Learned counsel confines his submission that order as passed by this Court on 17-07-2006 in W.P. No.3487 of 2006 be

passed in this case also. The petition lacks material facts which are necessary for adjudication to consider this petition for grant of compassionate appointment.

(3) It is well settled that the appointment on compassionate ground is not a method of recruitment, but, is a facility to provide for immediate rehabilitation of the family in distress for relieving the dependent family members of the deceased employee from destitution. In other words, the object of compassionate appointment is to enable penurious family to tide over the sudden financial crisis and is not to provide employment. It is also well settled that mere death of the employee does not entitle his family to claim compassionate appointment if the family members could sustain themselves financially from other sources of income.

(4) In **Haryana State Electricity Board and another Vs. Hakim Singh** [1] in para 12 the Supreme Court observed as under :

> " It appears that the High Court would have treated the provision as a lien created by the Board for a dependant of the deceased employee. If the family members of the deceased employee can manage for fourteen years after his death one of his legal heirs cannot put forward a claim as though it is a line of succession by virtue of a right of inheritance. The object of the provisions should not be forgotten that it is to give succor to the family to tide over the sudden financial crisis befallen the dependants on account of the untimely demise of its sole earning member."

(5) The Supreme Court in the case of **State of J &K and others Vs. Sajad Ahmd Mir** [2] in para 11 has held as under :

> " ..... it is that such an appointment is an exception to the general rule. Normally, an employment in the Government or other public

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> sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say "goodbye" to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution. "

(6) In the case in hand, the father of the petitioner died on 06.07.1994. Thereafter, the family members of the deceased employee managed their conditions for about 12 years, as such it cannot be held that compassionate appointment be granted to rehabilitate the family members of the deceased to tide over the sudden financial crisis. The grant of compassionate appointment is an exception to the general rule and this is also not in consonance with Article 14 of the Constitution of India. The grant of appointment on compassionate basis *de hors* recruitment rules encourages backdoor entry into service.

(7) For the reasons stated above and the dicta laid down by the Supreme Court, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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1. **(1997) 8 SCC 85**
2. **(2006) 5 SCC 766**